

process would pose an impossible administrative burden on the DOJ and may alert the subjects of law enforcement investigations, who might be otherwise unaware, to the fact of those investigations.

(10) From subsections (f) and (g) to the extent that the system is exempt from other specific subsections of the Privacy Act.

[Order No. 009–2012, 77 FR 23117, Apr. 18, 2012]

§ 16.135 Exemptions of Executive Office for Organized Crime Drug Enforcement Task Forces Systems.

(a) The following systems of records are exempt from 5 U.S.C. 552a(c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (4)(G), (H), and (I), (5), and (8); (f); and (g):

(1) The Organized Crime Drug Enforcement Task Forces Management Information System (OCDETF MIS) (JUSTICE/OCDETF-001); and

(2) The Organized Crime Drug Enforcement Task Force Fusion Center and International Organized Crime Intelligence and Operations Center System (JUSTICE/OCDETF-002).

(b) These exemptions apply only to the extent that information is subject to exemption under 5 U.S.C. 552a(j) and/or (k).

(c) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because to provide the subject with an accounting of disclosures of records in these systems could inform that individual of the existence, nature, or scope of an actual or potential law enforcement or counterintelligence investigation by the Organized Crime Drug Enforcement Task Forces, the Organized Crime Drug Enforcement Task Force Fusion Center, the International Organized Crime Intelligence and Operations Center, or the recipient agency, and could permit that individual to take measures to avoid detection or apprehension, to learn of the identity of witnesses and informants, or to destroy evidence, and would therefore present a serious impediment to law enforcement or counterintelligence efforts. In addition, disclosure of the accounting would amount to notice to the individual of the existence of a record. Moreover, re-

lease of an accounting may reveal information that is properly classified pursuant to Executive Order.

(2) From subsection (c)(4) because this subsection is inapplicable to the extent that an exemption is being claimed for subsections (d)(1), (2), (3), and (4).

(3) From subsection (d)(1) because disclosure of records in the system could alert the subject of an actual or potential criminal, civil, or regulatory violation of the existence of that investigation, of the nature and scope of the information and evidence obtained as to his or her activities, of the identity of confidential witnesses and informants, of the investigative interest of the Organized Crime Drug Enforcement Task Forces, the Organized Crime Drug Enforcement Task Force Fusion Center, the International Organized Crime Intelligence and Operations Center, and other intelligence or law enforcement agencies (including those responsible for civil proceedings related to laws against drug trafficking or related financial crimes or international organized crime); could lead to the destruction of evidence, improper influencing of witnesses, fabrication of testimony, and/or flight of the subject; could reveal the details of a sensitive investigative or intelligence technique, or the identity of a confidential source; or could otherwise impede, compromise, or interfere with investigative efforts and other related law enforcement and/or intelligence activities. In addition, disclosure could invade the privacy of third parties and/or endanger the life, health, and physical safety of law enforcement personnel, confidential informants, witnesses, and potential crime victims. Access to records could also result in the release of information properly classified pursuant to Executive Order.

(4) From subsection (d)(2) because amendment of the records thought to be inaccurate, irrelevant, incomplete, or untimely would also interfere with ongoing investigations, criminal or civil law enforcement proceedings, and other law enforcement activities; would impose an impossible administrative burden by requiring investigations, analyses, and reports to be continuously reinvestigated and revised;

and may impact information properly classified pursuant to Executive Order.

(5) From subsections (d)(3) and (4) because these subsections are inapplicable to the extent that exemption is claimed from subsections (d)(1) and (2) and for the reasons stated in § 16.135(c)(3) and (c)(4).

(6) From subsection (e)(1) because, in the course of their acquisition, collation, and analysis of information under the statutory authority granted, the Organized Crime Drug Enforcement Task Forces, the Organized Crime Drug Enforcement Task Force Fusion Center, and the International Organized Crime Intelligence and Operations Center will occasionally obtain information, including information properly classified pursuant to Executive Order, that concerns actual or potential violations of law that are not strictly within their statutory or other authority or may compile and maintain information which may not be relevant to a specific investigation or prosecution. This is because it is impossible to determine in advance what information collected during an investigation or in support of these mission activities will be important or crucial to an investigation. In the interests of effective law enforcement, it is necessary to retain such information in these systems of records because it can aid in establishing patterns of criminal activity of a suspect and can provide valuable leads for federal and other law enforcement agencies. This consideration applies equally to information acquired from, or collated or analyzed for, both law enforcement agencies and agencies of the U.S. foreign intelligence community and military community.

(7) From subsection (e)(2) because in a criminal, civil, or regulatory investigation, prosecution, or proceeding, the requirement that information be collected to the greatest extent practicable from the subject individual would present a serious impediment to law enforcement because the subject of the investigation, prosecution, or proceeding would be placed on notice as to the existence and nature of the investigation, prosecution, or proceeding and would therefore be able to avoid detection or apprehension, to influence witnesses improperly, to destroy evi-

dence, or to fabricate testimony. Moreover, thorough and effective investigation and prosecution may require seeking information from a number of different sources.

(8) From subsection (e)(3) because to comply with the requirements of this subsection during the course of an investigation could impede the information-gathering process, thus hampering the investigation or intelligence gathering. Disclosure to an individual of investigative interest would put the subject on notice of that fact and allow the subject an opportunity to engage in conduct intended to impede that activity or avoid apprehension. Disclosure to other individuals would likewise put them on notice of what might still be a sensitive law enforcement interest and could result in the further intentional or accidental disclosure to the subject or other inappropriate recipients, convey information that might constitute unwarranted invasions of the personal privacy of other persons, unnecessarily burden law enforcement personnel in information-collection activities, and chill the willingness of witnesses to cooperate.

(9) From subsections (e)(4)(G) and (H) because this system is exempt from the access and amendment provisions of subsection (d).

(10) From subsection (e)(4)(I) to the extent that this subsection could be interpreted to require more detail regarding system record sources than has been published in the FEDERAL REGISTER. Should this subsection be so interpreted, exemption from this provision is necessary to protect the sources of law enforcement and intelligence information and to protect the privacy and safety of witnesses and informants and other information sources. Further, greater specificity could compromise other sensitive law enforcement information, techniques, and processes.

(11) From subsection (e)(5) because the acquisition, collation, and analysis of information for law enforcement purposes from various agencies does not permit a determination in advance or a prediction of what information will be matched with other information and thus whether it is accurate, relevant, timely, and complete. With the

passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light, and the accuracy of such information can often only be determined in a court of law. The restrictions imposed by subsection (e)(5) would restrict the ability of trained investigators, intelligence analysts, and government attorneys to exercise their judgment in collating and analyzing information and would impede the development of criminal or other intelligence necessary for effective law enforcement.

(12) From subsection (e)(8) because the individual notice requirements could present a serious impediment to law enforcement by revealing investigative techniques, procedures, evidence, or interest, and by interfering with the ability to issue warrants or subpoenas; could give persons sufficient warning to evade investigative efforts; and would pose an unacceptable administrative burden on the maintenance of these records and the conduct of the underlying investigations.

(13) From subsections (f) and (g) because these subsections are inapplicable to the extent that the system is exempt from other specific subsections of the Privacy Act.

[Order No. 006–2013, 78 FR 69754, Nov. 21, 2013; 78 FR 77586, Dec. 24, 2013]

§ 16.136 Exemption of the Department of Justice, Giglio Information System, Justice/DOJ–017.

(a) The Department of Justice, Giglio Information Files (JUSTICE/DOJ–017) system of records is exempted from subsections (c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (4)(G), (H), and (I), (5), and (8); (f); and (g) of the Privacy Act. These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j) and/or (k).

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because this subsection is inapplicable to the extent that an exemption is being claimed for subsection (d).

(2) From subsection (c)(4) because this subsection is inapplicable to the

extent that an exemption is being claimed for subsection (d).

(3) From subsection (d) because access to the records contained in this system may interfere with or impede an ongoing investigation as it may be related to allegations against an agent or witness who is currently being investigated. Further, other records that are derivative of the subject's employing agency files may be accessed through the employing agency's files.

(4) From subsection (e)(1) because it may not be possible to determine in advance if potential impeachment records collected and maintained in order to sufficiently meet the Department's *Giglio* requirements and obligations are all relevant and necessary. In order to ensure that the Department's prosecutors and investigative agencies receive sufficient information to meet their obligations under *Giglio*, it is appropriate to maintain potential impeachment information in accordance with Department policy as such records could later be relevant and necessary in a different case in which the same witness or affiant subsequently testifies.

(5) From subsection (e)(2) because collecting information directly from the subject individual could serve notice that the individual is the subject of investigation and because of the nature of the records in this system, which are used to impeach or demonstrate bias of a witness, requires that the information be collected from others.

(6) From subsection (e)(3) because federal law enforcement officers receive notice from their supervisors and prosecuting attorneys that impeachment information may be used at trial. Law enforcement officers are also given notice by the *Giglio* decision itself.

(7) From subsections (e)(4)(G), (H), and (I) because this system of records is exempt from the access and amendment provisions of subsection (d).

(8) From subsection (e)(5) because it may not be possible to determine in advance if all potential impeachment records collected and maintained in order to sufficiently meet the Department's *Giglio* requirements and obligations are all accurate, relevant, timely,